

**WEINER
BRODSKY
SIDMAN
KIDER PC**

231799

FEB 6 2012

February 6, 2012

FILED

FEB 6 - 2012

**SURFACE
TRANSPORTATION BOARD**

BY HAND

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

**ENTERED
Office of Proceedings**

FEB 6 - 2012

**Part of
Public Record**

Re: STB Finance Docket No. 35594, Eric Temple – Control Exemption –
Portland Vancouver Junction Railroad, LLC

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceedings are an original and 10 copies of the verified notice of exemption of Eric Temple, pursuant to 49 C.F.R. § 1180.2(d)(2). Also enclosed are 20 additional copies of the maps attached as Exhibit A to the filing, pursuant to 49 C.F.R. § 1180.6(a)(6).

In addition, enclosed is a check in the amount of \$1,700 to cover the cost of the filing.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Sincerely,


Rose-Michele Nardi

Enclosures

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**SURFACE
TRANSPORTATION BOARD**

231799

BEFORE THE
SURFACE TRANSPORTATION BOARD **FEE RECEIVED**

STB FINANCE DOCKET NO. 35594

FEB 6 - 2012

ERIC TEMPLE
- CONTROL EXEMPTION -
PORTLAND VANCOUVER JUNCTION RAILROAD, LLC

SURFACE
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VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 CFR Section 1180.2(d)(2), Eric Temple (the "Petitioner") files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. § 11323.

Applicant's full name and current mailing address:

Eric Temple
President, Portland Vancouver Junction Railroad, LLC
14205 SE 36th St.
Suite 100
Bellevue, WA 98006

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Applicant's representative to receive correspondence:

Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street, NW
Fifth Floor
Washington, D.C. 20036-1609
(202) 628-2000

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Description of the proposed transaction:

Petitioner, a non-carrier individual, seeks authority to directly control Portland Vancouver Junction Railroad, LLC ("PVJR"), upon acquiring 100% of the membership interest in PVJR. Petitioner and Nicholas B. Temple currently directly control Central Washington Railroad Company ("CWA") and Columbia Basin Railroad Company, Inc. ("CBRW"), and indirectly control PVJR, which is a wholly-owned subsidiary of CBRW.¹ See STB Docket No. 35210, *Nicholas B. Temple, Eric Temple, Columbia Basin Railroad Company, Central Washington Railroad Company and Portland*

¹ Petitioner and Nicholas B. Temple each currently has a fifty percent ownership interest in CBRW and a forty-five percent ownership interest in CWA.

Vancouver Junction Railroad, LLC -- Corporate Family Transaction Exemption, served January 16, 2009; *Nicholas B. Temple and Eric Temple -- Control Exemption -- Central Washington Railroad Company*, STB Finance Docket No. 34641, served January 21, 2005.

PVJR does not connect with either CBRW or CWA, nor is this transaction part of a series of anticipated transactions that would connect PVJR to CBRW or CWA. There are no class I carriers involved in this transaction.

Proposed consummation date:

The transaction is expected to be consummated on or after March 7, 2012.

Purpose of the transaction:

The purpose of this transaction is to provide Petitioner with sole and direct control of PVJR, in addition to its current controlling interests in CBRW and CWA.

States where property is located:

PVJR, CBRW and CWA are each wholly located within the State of Washington.

Maps of lines:

Maps showing the general location of the rail operations of PVJR, CWA and CBRW are attached as Exhibit A. Pursuant to 49 C.F.R. § 1180.6(a)(6), twenty additional copies of the maps are also included.

Agreement pertaining to the transaction:

Attached as Exhibit B are the (1) Distribution Of Membership Interests, and (2) Bill of Sale, each dated February 1, 2012.

Labor protection:

PVJR, CBRW and CWA are each a class III rail carrier. Under 49 U.S.C. § 11326(c), no labor protection applies to a control transaction where only class III carriers are involved.²

² In a decision served October 1, 1997, the Board affirmed that it is the class status of the carriers involved in the proposed transaction and not the involvement of noncarrier entities that determines whether or not section 11326(c) is applicable to a proceeding. See Finance Docket No. 32863, *Genesee & Wyoming, Inc. – Continuance in Control Exemption – Illinois & Midland Railroad, Inc.*, 1997 STB LEXIS 243, served Oct. 1, 1997, *aff'd per curiam*, *International Brotherhood of Locomotive Engineers v. Surface Transportation Board*, 172 F.3d 919, 1998 WL 720670 (D.C. Cir. Sept. 14, 1998).

No Interchange Commitment:

The subject transaction does not involve "a provision or agreement that may limit future interchange with a third party connecting carrier...." *See* 49 C.F.R. § 1180.4(g)(4).

Environmental issues:

Environmental documentation normally need not be submitted for transactions that do not "cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) An average of 50 rail carloads per mile per year for any part of the affected line" (49 C.F.R. § 1105.7(e)(4)), on the one hand, or that does not "result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment" (49 C.F.R. § 1105.7(e)(5)), on the other hand. *See* 49 C.F.R. § 1105.6(c)(2).

The subject transaction will not result in changes in carrier operations that exceed the above-listed thresholds. Therefore, no environmental documentation is required for this Verified Notice of Exemption.

Transactions involving "[a] sale, lease or transfer of a rail line for the purpose of continued rail operations" are exempt from the historic report requirements of 49 C.F.R. § 1105.8(a) if abandonment of such operations requires further approval by the Surface Transportation Board "and there are no plans to dispose of or alter properties subject to [the Board's] jurisdiction that are 50 years old or older." *See* 49 C.F.R. § 1105.8(b)(1).

Board approval will be required to terminate common carrier operations over PVJR's rail system, and Petitioner has no plans to dispose of or alter 50-year old properties or older, over which the Board has jurisdiction.³ Therefore, no historic documentation is required for this

³ In addition, to the extent that the STB views this (1) as a transaction between corporate affiliates, the subject transaction will not result in a "significant change in operations", or (2) as a transaction similar to "common control through stock ownership", the subject transaction will not result in substantial change to the maintenance level of PVJR's rail system. *See* 49 C.F.R. § 1105.8(b)(2) and (3).

Verified Notice of Exemption.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rose-Michele Nardi".

Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street, NW
Fifth Floor
Washington, D.C. 20036-1609
(202) 628-2000

Attorneys for Petitioner

Dated: February 6, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35594

**ERIC TEMPLE
- CONTROL EXEMPTION -
PORTLAND VANCOUVER JUNCTION RAILROAD, LLC**

EXHIBIT A

MAPS OF THE PVJR, CBRW AND CWA

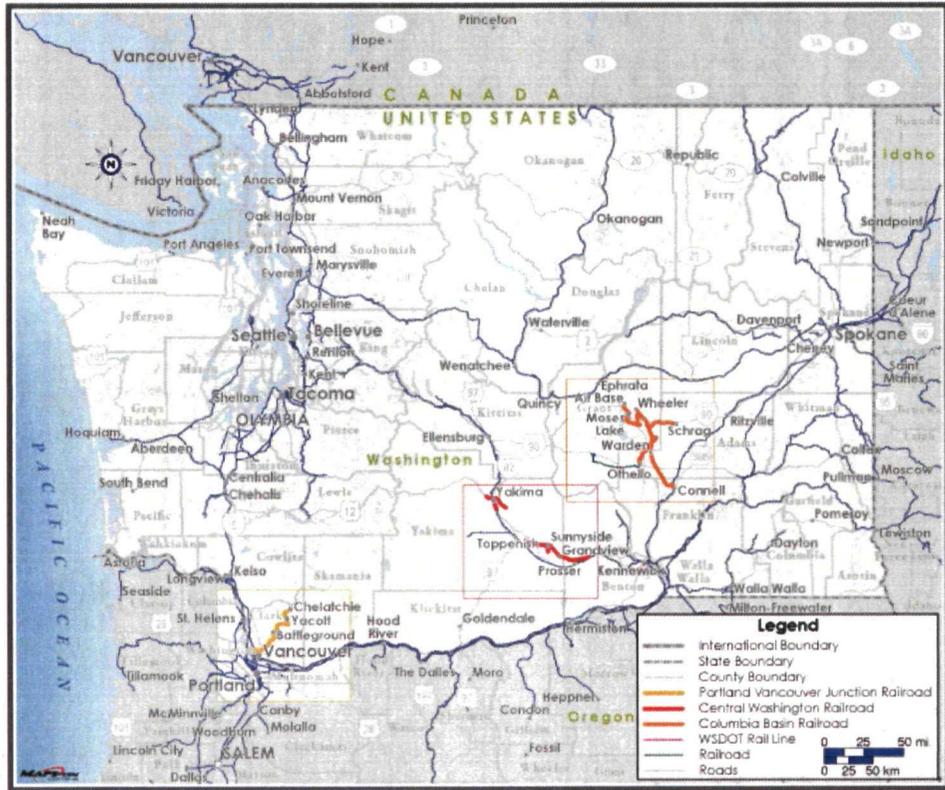


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- MARKETING
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SERVICE MAP



MOUSE OVER RAILROAD LOGO TO SEE SERVICE MAP DETAIL BELOW.



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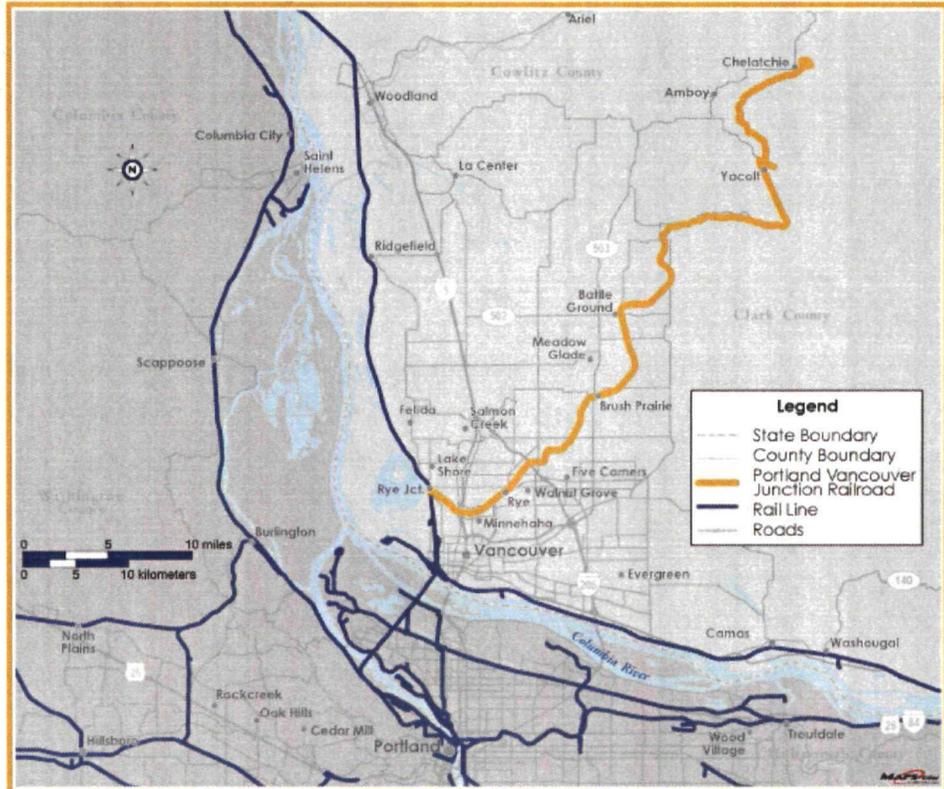


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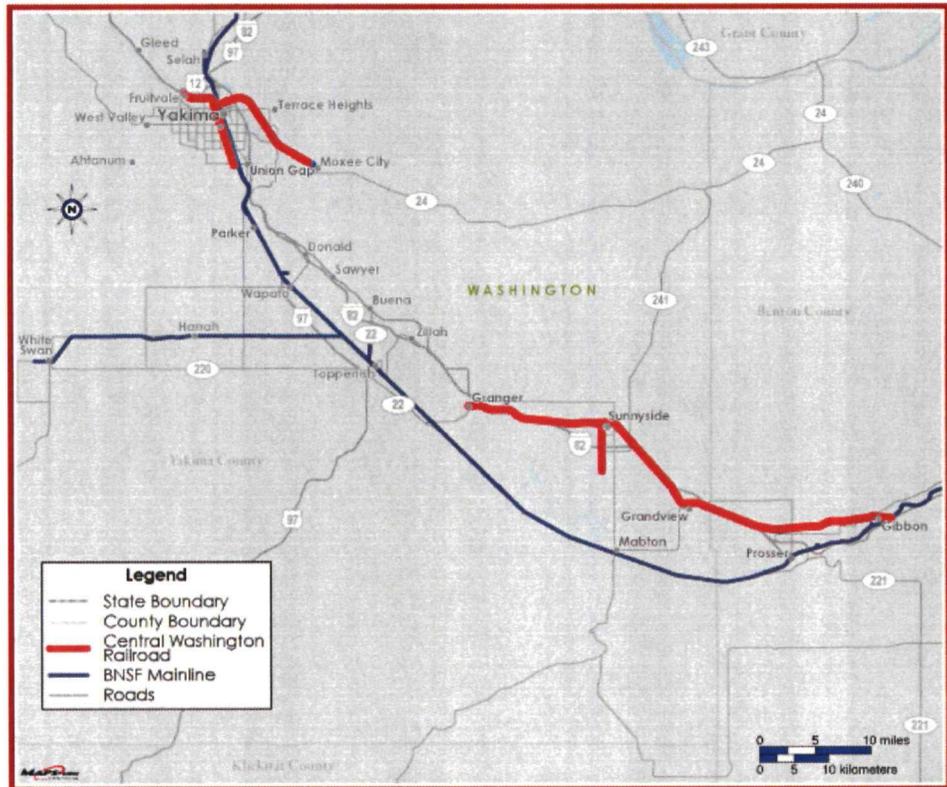


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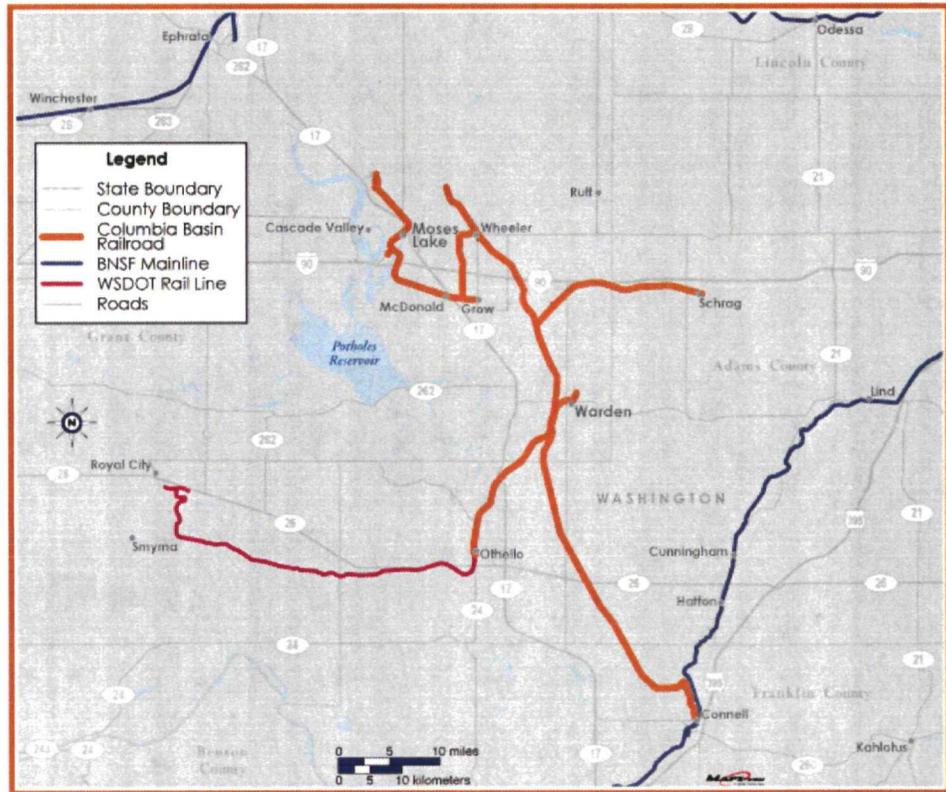


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**ERIC TEMPLE
- CONTROL EXEMPTION -
PORTLAND VANCOUVER JUNCTION RAILROAD, LLC**

EXHIBIT B

AGREEMENTS

DISTRIBUTION OF MEMBERSHIP INTERESTS
Re: PVJR Membership Interest (CBRR to Eric and Brig)

EXECUTION DATE: February 1, 2012

PARTIES: **COLUMBIA BASIN RAILROAD COMPANY, INC.,**
 a Washington corporation
 (referred to in this instrument as "CBRR")

PORTLAND VANCOUVER JUNCTION RAILROAD, LLC,
 a Washington limited liability company
 (referred to in this instrument as "PVJR")

ERIC S. TEMPLE,
 an individual
 (referred to in this instrument as "Eric")

N. BRIGHAM TEMPLE, JR.
 an individual
 (referred to in this instrument as "Brig")

SUBJECT MEMBERSHIP INTEREST. The term "Subject Membership Interest", when used in this instrument, means and refers to all of CBRR's right, title, and interest in Portland Vancouver Junction Railroad, LLC, a Washington limited liability company, to wit: CBRR's *one hundred percent (100%) membership interest* in Portland Vancouver Junction Railroad, LLC.

CLARK COUNTY LEASE AND RELATED DOCUMENTS. The term "Clark County Lease and Related Agreements", when used in this instrument, means and refers to the "Clark County Lease and Related Agreements" described in Section 7 of the below-referenced Settlement Implementation Agreement.

BACKGROUND. This instrument is now executed for the purpose of carrying out the terms of that certain Settlement Agreement and Release and Settlement Implementation Agreement with Effective Dates of December 31, 2011, made by and between Eric, Brig, and other related parties. As a result of this instrument, Portland Vancouver Junction Railroad, LLC will now be owned by the following individuals in the below-stated percentages:

<u>Member Name</u>	<u>Membership Interest</u>
Eric S. Temple	50%
N. Brigham Temple, Jr.	50%

DISTRIBUTION. Subject to satisfaction of the PVJR Takeover Contingency and STB Contingency set forth in the following paragraph, CBRR hereby assigns and transfers the Subject Membership Interest to Eric and Brig in equal parts as their sole and separate property, such that Eric and Brig shall now each own separate *fifty percent (50%)* membership interests in PVJR. From and after the effective date of the assignment and transfer set forth in the preceding sentence, CBRR shall have no further proprietary or other interest in Portland Vancouver Junction Railroad, LLC ("PVJR").

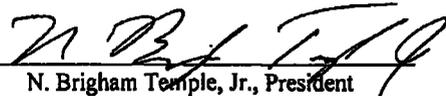
The assignment and transfer set forth in the preceding paragraph is contingent on and will not be effective until 12:01 a.m. on the *first (1st) day* after (a) Clark County, Washington, in a signed writing, (i) approves of and consents to Columbia Basin Railroad Company, Inc.'s ("CBRR's") assignment and transfer of all of CBRR's right, title, interest, and obligations in and under the Clark County Lease and Related Agreements to PVJR and (ii) agrees that CBRR is thereby released from performing any obligations and from all liabilities under the Clark County Lease and Related Agreements (the "PVJR Takeover Contingency"); and (b) PVJR obtains all permits, licenses, and/or other authorizations from the U.S. Department of Transportation's Surface Transportation Board and all other applicable governmental authorities (if any) necessary for PVJR to operate and manage the Portland Vancouver Junction Railroad as a common carrier wholly-owned by Eric (the "STB Contingency").

CBRR represents and warrants that at the time of the assignment and transfer for the Subject Membership Interest under this instrument (a) CBRR will be the sole lawful owner of the Subject Membership Interest and (b) the Subject Membership Interest will be free from all liens, claims, and other encumbrances.

This instrument may be executed in any number of identical counterparts, with each counterpart having the effect as if all parties to this instrument had signed the same document. All counterparts will be construed as and constitute one and the same instrument. A facsimile or PDF copy of a signed counterpart will have the same effect as an original counterpart.

EXECUTED as of the Execution Date first written above.

COLUMBIA BASIN RAILROAD COMPANY, INC.

By: 
N. Brigham Temple, Jr., President

By: _____
Eric S. Temple, Secretary

ACCEPTANCE AND RECEIPT

The undersigned, subject to the satisfaction of the PVJR Takeover Contingency and STB Contingency, hereby accept and receive CBRR's above-stated assignment and transfer of the Subject Membership Interest.

EXECUTED as of the Execution Date first written above.

ERIC S. TEMPLE, individually



N. BRIGHAM TEMPLE, JR., Individually

The assignment and transfer set forth in the preceding paragraph is contingent on and will not be effective until 12:01 a.m. on the *first (1st) day* after (a) Clark County, Washington, in a signed writing, (i) approves of and consents to Columbia Basin Railroad Company, Inc.'s ("CBRR's") assignment and transfer of all of CBRR's right, title, interest, and obligations in and under the Clark County Lease and Related Agreements to PVJR and (ii) agrees that CBRR is thereby released from performing any obligations and from all liabilities under the Clark County Lease and Related Agreements (the "PVJR Takeover Contingency"); and (b) PVJR obtains all permits, licenses, and/or other authorizations from the U.S. Department of Transportation's Surface Transportation Board and all other applicable governmental authorities (if any) necessary for PVJR to operate and manage the Portland Vancouver Junction Railroad as a common carrier wholly-owned by Eric (the "STB Contingency").

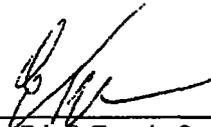
CBRR represents and warrants that at the time of the assignment and transfer for the Subject Membership Interest under this instrument (a) CBRR will be the sole lawful owner of the Subject Membership Interest and (b) the Subject Membership Interest will be free from all liens, claims, and other encumbrances.

This instrument may be executed in any number of identical counterparts, with each counterpart having the effect as if all parties to this instrument had signed the same document. All counterparts will be construed as and constitute one and the same instrument. A facsimile or PDF copy of a signed counterpart will have the same effect as an original counterpart.

EXECUTED as of the Execution Date first written above.

COLUMBIA BASIN RAILROAD COMPANY, INC.

By: _____
N. Brigham Temple, Jr., President

By:  _____
Eric S. Temple, Secretary

ACCEPTANCE AND RECEIPT

The undersigned, subject to the satisfaction of the PVJR Takeover Contingency and STB Contingency, hereby accept and receive CBRR's above-stated assignment and transfer of the Subject Membership Interest.

EXECUTED as of the Execution Date first written above.



ERIC S. TEMPLE, individually

N. BRIGHAM TEMPLE, JR., individually

BILL OF SALE
Re: PVJR Membership Interest (Brig to Eric)

EXECUTION DATE: February 1, 2012

PARTIES: **N. BRIGHAM TEMPLE, JR.**
 an individual
 (referred to in this instrument as "Brig")

ERIC S. TEMPLE,
 an individual
 (referred to in this instrument as "Eric")

SUBJECT MEMBERSHIP INTEREST. The term "Subject Membership Interest", when used in this instrument, means and refers to all of Brig's right, title, and interest in Portland Vancouver Junction Railroad, LLC, a Washington limited liability company, to wit: Brig's *fifty percent (50%) membership interest* in Portland Vancouver Junction Railroad, LLC.

CLARK COUNTY LEASE AND RELATED DOCUMENTS. The term "Clark County Lease and Related Agreements", when used in this instrument, means and refers to the "Clark County Lease and Related Agreements" described in Section 7 of the below-referenced Settlement Implementation Agreement.

BACKGROUND. This instrument is now executed for the purpose of carrying out the terms of that certain Settlement Agreement and Release and Settlement Implementation Agreement with Effective Dates of December 31, 2011, made by and between Eric, Brig, and other related parties. As a result of this instrument, Portland Vancouver Junction Railroad, LLC will now be owned by the following individuals in the below-stated percentages:

<u>Member Name</u>	<u>Membership Interest</u>
Eric S. Temple	100%

ASSIGNMENT. For good and valuable consideration and subject to satisfaction of the PVJR Takeover Contingency, STB Contingency, and CBRR Distribution Contingency set forth in the following paragraph, Brig hereby assigns and transfers the Subject Membership Interest to Eric as Eric's sole and separate property. From and after the effective date of the assignment and transfer set forth in the preceding sentence, Brig shall have no further proprietary or other interest in Portland Vancouver Junction Railroad, LLC ("PVJR").

The assignment and transfer set forth in the preceding paragraph is contingent on and will not be effective until 12:01 a.m. on the *first (1st) day* after (a) Clark County, Washington, in a signed writing, (i) approves of and consents to Columbia Basin Railroad Company, Inc.'s ("CBRR's") assignment and transfer of all of CBRR's right, title, interest, and obligations in and under the Clark County Lease and Related Agreements to PVJR and (ii) agrees that CBRR is thereby released from performing any obligations and from all liabilities under the Clark County Lease and Related Agreements (the "PVJR Takeover Contingency"); (b) PVJR obtains all permits, licenses, and/or other authorizations from the U.S. Department of Transportation's Surface Transportation Board and all other applicable governmental authorities (if any) necessary for PVJR to operate and manage the Portland Vancouver Junction Railroad

as a common carrier wholly-owned by Eric (the "STB Contingency"); and (c) CBRR has assigned and transferred the Subject Membership Interest to Brig ("CBRR Distribution Contingency").

Brig represents and warrants that at the time of the assignment and transfer for the Subject Membership Interest under this instrument (a) Brig will be the sole lawful owner of the Subject Membership Interest and (b) the Subject Membership Interest will be free from all liens, claims, and other encumbrances.

This Bill of Sale may be executed in any number of identical counterparts, with each counterpart having the effect as if all parties to this Bill of Sale had signed the same document. All counterparts will be construed as and constitute one and the same instrument. A facsimile or PDF copy of a signed counterpart will have the same effect as an original counterpart.

EXECUTED as of the Execution Date first written above.



N. BRIGHAM TEMPLE, JR., individually

ACCEPTANCE AND RECEIPT

The undersigned, subject to the satisfaction of the PVJR Takeover Contingency, STB Contingency, and CBRR Distribution Contingency, hereby accepts and receives Brig's above-stated assignment and transfer of the Subject Membership Interest.

EXECUTED as of the Execution Date first written above.

ERIC S. TEMPLE, individually

as a common carrier wholly-owned by Eric (the "STB Contingency"); and (c) CBRR has assigned and transferred the Subject Membership Interest to Brig ("CBRR Distribution Contingency").

Brig represents and warrants that at the time of the assignment and transfer for the Subject Membership Interest under this instrument (a) Brig will be the sole lawful owner of the Subject Membership Interest and (b) the Subject Membership Interest will be free from all liens, claims, and other encumbrances.

This Bill of Sale may be executed in any number of identical counterparts, with each counterpart having the effect as if all parties to this Bill of Sale had signed the same document. All counterparts will be construed as and constitute one and the same instrument. A facsimile or PDF copy of a signed counterpart will have the same effect as an original counterpart.

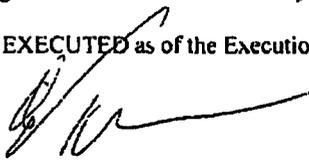
EXECUTED as of the Execution Date first written above.

N. BRIGHAM TEMPLE, JR., individually

ACCEPTANCE AND RECEIPT

The undersigned, subject to the satisfaction of the PVJR Takeover Contingency, STB Contingency, and CBRR Distribution Contingency, hereby accepts and receives Brig's above-stated assignment and transfer of the Subject Membership Interest.

EXECUTED as of the Execution Date first written above.



ERIC S. TEMPLE, individually

VERIFICATION

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to cause this Verified Notice of Exemption to be filed.



Eric Temple, Manager
Portland Vancouver Junction Railroad, LLC

Dated: February 6, 2012